



Human rights must be at the core of development financing

Comments by Juan Pablo Bohoslavsky

Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights

26 May 2015*

Member States are currently negotiating in New York the text of the outcome document of the 3rd International Conference on Financing for Development to be held on 13 to 16 July 2015 in Addis Ababa. The conference will be crucial to mobilize necessary resources to ensure that future international development goals can realistically be met. Human rights should be at the core of development financing to ensure that everybody can enjoy a decent life, free from hunger with adequate access to education, health care, housing and drinking water.¹ One of the ambitions of the conference is to ensure that international agreements, rules and standards are consistent with each other and with progress towards the future Sustainable Development Goals.² While the revised draft outcome document contains many positive elements, there are several areas where language could be improved to ensure better coherence with international human rights standards and obligations. The commitment to human rights could particularly be more thoroughly reflected in some of the substantive chapters of the draft outcome document.

Addis Ababa Accord

Paragraph 1 and 5

I welcome that the draft outcome document makes in the introduction upfront a commitment to gender equality, the protection of human rights and the right to development. The draft also reaffirms the importance of freedom, peace and security, good governance, rule of law, combatting corruption, sound economic policies and solid democratic institutions at the sub-national, national and international levels (paragraph 5).

* Edited version of the document shared with the co-facilitators of the preparatory process to the Third Conference on Financing for Development on 22 May 2015.

¹ See as well: OHCHR: Key messages on Human Rights and Financing for Development, available at: <http://www.ohchr.org/Documents/Issues/Development/KeyMessageHRFinancingDevelopment.pdf> and <http://www.ohchr.org/Documents/Issues/Development/CommentsOnFFD.pdf>

² Revised Draft of the Outcome Document, 6 May 2015, paragraph 98 available at: <http://www.un.org/esa/ffd/wp-content/uploads/2015/05/revised-draft-outcome.pdf>

I would however suggest adding at the end of the first paragraph a reference to a core principle enshrined as well in article 2 of the Declaration of the Right to Development:

We reaffirm that the human person is the central subject of development and should be its active participant and beneficiary.

States, governments, businesses, private finance, international organisations, civil society organisations and philanthropic associations mentioned in the text of the outcome document all play a crucial role in promoting sustainable development, but we should be humble enough to underline upfront that the human person should be at the core of sustainable development and be its main beneficiary and participant.

Paragraph 3 and 4

While it is true that debt burdens in many poor countries have been reduced, the revised draft outcome document maintains that such “advances have contributed to substantial reduction in global poverty and to notable progress towards the achievement of the Millennium Development Goals.” (paragraph 3). In reality this “success story” is more ambivalent, as the draft outcome document acknowledges in paragraph 4. According to IMF/World Bank assessments, 26 low-income countries are either in debt distress or at high risk of debt distress.³ While the international debt relief for heavily indebted poor countries (HIPC) enabled several of them to increase their social spending, many of these countries are still “seriously off target” in achieving several of their Millennium Development Goals by end of 2015. Only 5 out of the 35 HIPC countries that benefitted from debt relief have so far met MDG1, ending poverty and hunger, more than half of them (18) are “seriously off target”, and most of them are also likely to miss targets to reduce infant and maternity mortality rates.⁴ Unsustainable debt burdens, adjustment and austerity policies have also resulted in retrogressive measures affecting the enjoyment of economic, social, and cultural rights in many middle-income and highly developed countries, showing that unsustainable debt is a global problem. I would therefore suggest adding to paragraph 4, after the first sentence:

Unsustainable debt burdens continue to pose challenges in many countries, including middle-income and highly developed countries to the realization of economic, social and cultural rights and sustainable development.

In addition I would recommend adding in paragraph 4 before the sentence referring to environmental concerns and climate change the following sentence:

Economic adjustment policies need to ensure that human rights, including economic, social and cultural rights, remain protected and that they are aligned with sustainable development.

³ See <http://www.imf.org/external/pubs/ft/dsa/dsalist.pdf>

⁴ See for example IMF, Heavily Indebted Poor Countries (HIPC) initiative and Multilateral Debt Relief Initiative (MDRI) — statistical update, December 2014. pp. 15-16, available at: <http://www.imf.org/external/np/pp/eng/2014/121214.pdf>

Paragraph 7

I welcome that a reference to the specific development needs of middle-income countries has been added to this paragraph.

Mobilizing support for the post-2015 development agenda

Paragraph 11

In my view the draft outcome document should reiterate the obligation of States to mobilize maximum available resources for the progressive realization of economic, social, and cultural rights as set out in Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights. The Covenant obliges State Parties to undertake steps, to allocate maximum available resources for the realization of various social and economic rights. States should at the very least ensure the satisfaction of minimum essential levels of these rights.⁵ States are not only obliged to undertake such efforts within their own country. By signing or ratifying the Covenant they have also committed to realize these rights jointly through international assistance and co-operation, including economic and technical assistance.

I therefore would like to propose to insert at the end of paragraph 11 the following text:

We reaffirm our obligation to mobilize maximum available resources for the progressive realization of economic, social and cultural rights. We will undertake all necessary efforts to ensure that every person can at very least enjoy the satisfaction of minimum essential levels of these rights.

Paragraph 13

The draft outcome document rightly emphasizes the need to bridge the infrastructure gap in developing countries. I welcome that the text calls for infrastructure investments to be “environmentally, socially and economically sustainable”. However the text should be further strengthened, as concerns about negative environmental, social and human rights impacts of infrastructure projects continue to be widely reported. Infrastructure development can only be considered as “sustainable” if it complies with relevant international social, environmental and human rights standards:

Working with ongoing initiatives, this platform will bring together relevant stakeholders to identify gaps and constraints, particularly for countries and sectors that are often overlooked, ensure that projects are environmentally, socially and economically sustainable, **and comply with relevant social, environmental and human rights standards**, and will help mobilize financing from all sources.

⁵ See as well Committee on Economic, Social and Cultural Rights, General Comment No. 3, The nature of State party obligations, (Art. 2, par. 1)

II. Action Agenda

Domestic public resources

Paragraphs 16, 17 and 18

I appreciate that the draft outcome document gives pre-eminence to domestic resource mobilization for sustainable development and to, counter-cyclical fiscal policies, adequate fiscal space, and democratic and transparent institutions that will be responsive to the needs of people and good governance at all levels (paragraph 16). I would like to stress that domestic policies should not only aim for equity, but as well for equality and non-discrimination in line with international human rights obligations (paragraphs 18 and 19). I welcome therefore that references to the full and equal participation of women, youth and persons with disabilities in the formal labour market have been added to the text and that there is a commitment to promote and enforce non-discriminatory laws. The principles of equality and non-discrimination apply according to human rights law throughout society, encompassing all social groups, including children, persons with disabilities, the elderly, minorities, migrant workers, and indigenous communities. I would therefore suggest inserting equality and non-discrimination in paragraphs 18.

We agree to incorporate sustainable development, and promote equity, **non-discrimination and equality**, gender equality, women and girls' empowerment, and social inclusion as an objective in our domestic policies.

Paragraph 20

I welcome the commitment to combat tax evasion and substantially reduce and eventually eliminate illicit financial flows through strengthened national regulation and increased cooperation. Governments pledge as well to reduce opportunities for tax avoidance and to increase transparency, including by ensuring that all payments to governments from large companies are fully transparent. The draft outcome document states as well "we will make sure that a fair share of taxes is paid where economic activity occurs and value is created." These are important commitments that should be retained.

As I have outlined in a recent study to the Human Rights Council (A/HRC/28/60), illicit financial flows, and tax evasion and avoidance are a major drain to public resources, undermining the rule of law and the ability of developing nations to realize economic, social and cultural rights. In several countries, illicit financial outflows, generated by tax evasion, corruption or criminal activities, have been estimated to exceed Official Development Assistance. While there are different estimates about their actual size, there is widespread consensus that the loss of resources caused by illicit financial outflows has undermined progress toward realizing the Millennium Development Goals in many countries.

More transparency is necessary to curb illicit financial flows, and efforts need to be strengthened to ensure a timely and rule-of-law based recovery and return of stolen assets. Clearly, human rights, social justice and financial integrity are intimately linked.

Main beneficiaries of illicit financial outflows have been secrecy jurisdictions, transnational business corporations and certain financial service providers. Globally operating business enterprises and so-called high net worth individuals are often using existing legal loopholes to avoid contributing on a fair and equal footing to public revenues required for social development and realization of economic, social and cultural rights. While such tax

avoidance is not necessary in conflict with national laws, it undermines sustainable development.

While illicit financial flows have a particularly negative impact on low-income countries, tax evasion and tax avoidance schemes also undermine revenue collection in highly developed countries. Revenue has been lost to finance public goods and social security systems aimed at protecting economic and social rights. Regrettably some of the highly developed countries, in particular countries facing unsustainable public debt, have adopted or been forced to embark on excessive austerity measures that have resulted in retrogressive measures affecting the enjoyment of economic, social and cultural rights beyond the strict limits permissible under international human rights law. At the same time, efforts to improve revenue collection, to close loopholes for tax evasion and avoidance and to ensure tax justice have not necessarily been accorded similar priority. The emphasis the draft outcome document places on reducing illicit financial flows, combating tax evasion and addressing harmful tax competition is therefore important and much welcome.

However in my view, to ensure progress, States could be more ambitious and agree on deadlines for implementing such transparency measures. The commitments to “substantially reduce and eventually eliminate” illicit financial flows, is very welcome, but remains vague (paragraphs 20). I would therefore suggest adding a measurable target to reduce over the next 15 years illicit financial outflows related to trade mis-invoicing by a certain percentage. This could be done by inserting after the first sentence of paragraph 20 the following text:

We will work together to reduce by 2030 illicit financial flows related to trade mis-invoicing by 50 percent.

Paragraph 21, 23 and 26

In line with the recommendations contained in my 2015 report (A/HRC/28/60) I am pleased that the draft outcome document invites the United Nations, the IMF, the World Bank, and other relevant stakeholders, to develop a proposal for an official definition of illicit financial flows and to publish official estimates of their volume and breakdown (paragraph 21) and encourages countries to strengthen transparency and adopt appropriate policies, including country-by-country reporting by multinational enterprises; public beneficial ownership registries and automatic exchange of tax information (para 23). I would like to underscore that any international system of automatic exchange of tax information needs to allow developing countries to participate and benefit from it on an equal footing, and welcome the commitment to upgrade the United Nations Committee of Experts on International Cooperation in Tax Matters to an intergovernmental committee (paragraph 26).

However, language earlier included, in which governments committed to accelerate asset recovery, has been weakened. In my view it is necessary to clarify in more detail what both States of origin and States of destination will have to do to achieve progress. I welcome that a reference to “further increase transparency and accountability of the financial and banking systems” was inserted to the text, but what is missing are explicit references to tackle secrecy jurisdictions facilitating tax evasion and avoidance or to strengthen banking oversight to ensure that financial service providers exercise adequate due diligence when dealing with politically exposed persons and other customers. Curbing illicit financial flows and returning stolen assets requires collaboration by many stakeholders, and if responsibilities for implementing such targets are not clearly spelled out, it will be difficult to ensure

accountability for their implementation. I would therefore suggest adding a sentence to paragraph 26:

We commit to eliminate financial secrecy within our jurisdictions, by identifying and eliminating legal provisions permitting fiscal bank secrecy, the holding of anonymous accounts and by strengthening banking oversight to ensure that financial service providers exercise adequate due diligence when dealing with politically exposed persons and other customers.

The outcome document should furthermore call for better protection of journalists, anti-corruption activists and whistle-blowers that have been instrumental to uncovering corruption, tax evasion and tax avoidance. They need effective protection from reprisals and their rights should no longer be infringed with impunity. I would therefore propose to add after paragraph 26 the following paragraph:

We acknowledge the important role that journalists, human rights defenders, civil society and reporting persons have played in exposing corruption, tax evasion and tax avoidance. We will strengthen their protection and ensure an enabling environment for civil society in which they can participate and contribute to our efforts to combat corruption, tax evasion and avoidance.”

Paragraph 27

I appreciate very much references to “supreme audit institutions and other independent oversight institutions” and the commitment to “increase transparency and participation in all aspects of the budgeting process would like to insist that “national policies and public financial management should promote equity, **equality and non-discrimination, including gender equality and women’s and girls’ empowerment, good governance and accountability at all levels**” (paragraph 27, second sentence).

Paragraph 28

It is very positive that the text now states that “we commit to ensure social protection and essential public services to all, including indigenous peoples, children, persons with disabilities, youth and older persons”. While I agree that countries need to develop national appropriate solutions, and strongly support national ownership in development, some references to “national appropriate” or a “nationally agreed packages” contained in this paragraph may be open to misinterpretation, if they are not further qualified. While it is very good that States set their own targets in the field of social protection and their own spending targets for health, education, water and sanitation, such targets should be compatible with existing obligations States have already assumed under various international human rights treaties, including the obligation that States have to ensure that every person can at least enjoy the satisfaction of essential minimum levels of economic and social rights. I would therefore urge delegations to consider the following amendments to paragraph 28:

We commit to ensure social protection and essential public services for all, including indigenous peoples, children, persons with disabilities, youth and older persons, as part of a ~~new~~ **renewed** “social compact”. We will implement ~~nationally~~ appropriate social protection systems and measures for all, including floors, with a focus on those furthest below the poverty line and people in vulnerable situations. We will also set nationally appropriate spending targets on a package of essential social services, including health, education, water

and sanitation, consistent with **our human rights obligations and** our national sustainable development strategies. We will make every effort to meet these benchmarks for all communities. We agree to support national efforts with commensurate international cooperation and finance, particularly to LDCs and other vulnerable countries, to ensure that by 2030, ~~every woman, every child and every family has~~ **all persons have access without discrimination** to a nationally agreed package of essential services. ...

Paragraph 31

I welcome new references to disaster risk management, building of resilient infrastructure and strengthening of capacities of provinces and municipalities, in the areas of infrastructure development, local taxation, sectorial finance and debt issuance. However the sentence to ensure local community participation in infrastructure development projects should be brought in line with international norms and standards, such as the United Nations Declaration on the Rights of Indigenous Peoples (General Assembly resolution 61/295), ILO Convention No. 169 and the Basic Principles and Guidelines on Development-Based Evictions and Displacement (A/HRC/4/18, Annex). I would therefore urge to change the wording of this sentence in paragraph 31 as following:

In these efforts, we will ensure appropriate local community participation in decisions affecting their communities **in line with international norms and standards** ~~based on country circumstances~~.

Domestic and international private business and finance

Paragraph 32

I would recommend rephrasing the first sentence slightly. Private business activity, investment and innovation **can be** major drivers of productivity, inclusive growth, and job creation, providing people with the opportunity to overcome poverty and inequality, but it should not be taken for granted that private business activity or finance always results in these desired outcomes. Innovation can as well result in job losses for many, and globally private financial investment has rather increased inequalities.

Paragraph 33

Public policy plays not only a key role in creating an enabling environment and regulatory framework necessary to encourage entrepreneurship, but States are as well obliged to ensure that businesses respect social, environmental and human rights laws and standards. I would therefore urge insertion of the following text after the first sentence of this paragraph:

States have as well to ensure that private business and investment respects social, environmental and human rights norms and standards.

These norms must be part of a right enabling environment for sustainable development, similar to transparent, stable and predictable investment climates, proper contract enforcement and respect of property rights.

Paragraph 34, 38, 39

I welcome very much the language included in the draft outcome document to improve financial literacy, financial inclusion and access to formal financial services for all. The same applies to the target to reduce transaction costs for migrant remittances.

Paragraph 35

I welcome this paragraph, but would urge to reiterate the key principle enshrined in the United Nations Guiding Principles on Business and Human Rights by inserting to the paragraph after the first sentence:

We affirm that all businesses enterprises have the responsibility human rights.

Paragraph 36

I welcome very much the new language contained in this paragraph in particular the reference to the United Nations Guiding Principles on Business and Human Rights. The document does unfortunately not include any reference to the important initiative to develop binding regulations to ensure business respect for human rights that was set in motion by Human Rights Council resolution 26/9. I would therefore suggest adding the following sentence after the sentence referring to “strong regulatory frameworks and effective compliance mechanisms”:

We will implement the Guiding Principles on Business and Human Rights, through the adoption of national action plans or other suitable frameworks and will engage constructively with ongoing efforts to elaborate an international legally binding framework to regulate in human rights law the activities of transnational business enterprises and other businesses.

The reference to national action plans to implement the Guiding Principles is based on Human Rights Council resolution 26/22.

Paragraph 44

I would encourage making the following amendment to the first sentence, to ensure that social and governance standards include human rights standards:

We recognize the important contribution that direct investment, including FDI, can make to sustainable development when it is aligned with sustainable development and investors follow environmental, social, **human rights** and governance standards.

Paragraph 48

I welcome that the draft outcome document underlines that “Public-Private-Partnerships should not replace or compromise State responsibilities, and should include clear accountability mechanisms” and that “Governments should also ensure that PPPs do not lead to unsustainable debt burdens.” It is estimated that Public-Private Partnerships (PPPs) are responsible for 15-20 per cent of infrastructure investment in developing countries. PPPs usually include Government guarantees to bail out a private investor if their investment fails, but such payment obligations are not always adequately included in debt figures nor in debt

sustainability analysis conducted by the IMF or World Bank. This fact may contribute to debt problems if contingencies are not consistent with risks.

There is no compelling evidence that PPPs are always the most efficient and cost effective way to realise economic and social rights or international development goals. Frequently their fiscal impact or their actual contribution to reducing poverty is not evaluated. For example a recent study by the World Bank's Independent Evaluation Group found that of 442 PPPs supported by the Bank, assessments of their impact to reduce poverty were conducted for just 9 of them.⁶ States and International Financial Institutions should ensure that that PPPs are fully aligned with sustainable development goals and establish appropriate oversight mechanism to ensure that PPPs and blended finance instruments do not cause negative human rights impacts. I would therefore urge to add at the end of the paragraph the following sentence:

We will ensure that PPPs contribute to sustainable development and comply with environmental, social, and human rights standards.

International public finance

Paragraph 51

I appreciate that the draft outcome document sets 2020 as a target for developed countries to allocate 0.7 of the GNI in ODA to developing countries, with 0.15 to 0.20 per cent of GNI to LDCs.

Paragraph 64

Lending by development banks can play an important role in alleviating constraints for financing infrastructure for development and providing concessional and non-concessional development finance to developing countries. The establishment of new development banks, such as the New Development Bank or the Asian Infrastructure Investment Bank to make additional funds accessible for development projects is most welcome.

Yet, there is widespread concern that the social and environmental safeguard procedures of existing national and multilateral development banks have not been sufficiently robust to prevent human rights violations. Infrastructure projects financed by development banks have displaced millions of people around the world during the last decade, and affected individuals have not always received adequate compensation.⁷ Efforts to improve and review safeguards policies by Multilateral Development Banks should aim to enhance and not to dilute existing mechanisms. Over the past years the Special Procedures of the Human Rights Council, including my mandate have raised numerous with developing banks, including the European

⁶ Independent Evaluation Group: World Bank Support to Public-Private Partnerships: Lessons from Experience in Client Countries, FY 01-12, Washington 2015. Available at: <https://openknowledge.worldbank.org/handle/10986/21309>

⁷ See for example information and reports available at <http://www.icij.org/project/world-bank>; <http://www.hrw.org/topic/business/world-bank-imf>;

Bank for Reconstruction and Development and the World Bank.⁸ Protecting human rights is core responsibility of States. Multilateral institutions are as well bound by the laws that apply to their constituent members. They have to ensure that their lending activities comply with national and human rights law. In our globalised world no person or institution should be above the law.

I urge States to reconsider the proposed text in paragraph 64 as it is open to misinterpretation. While there is room for efficiency improvements and for strengthening safeguard procedures to avoid harm and to improve the monitoring of compliance - rushing through environmental, social and human rights impact assessments is not an option if we aim for sustainable development. I would therefore propose the following changes:

We encourage efforts by the MDBs to make the safeguards process more efficient and time-sensitive to ensure that public investment **complies with social, environmental and human rights standards**, is aligned with sustainable development and contributes to the realization of sustainable development goals ~~without being unduly burdensome~~.

International trade as an engine for development

Paragraph 72

I would recommend making the following changes to the fifth and sixth sentence of this paragraph:

We will **ensure policy coherence of** ~~integrate sustainable development into~~ trade policies at all levels, **and include** ~~ing~~ sustainable development provisions in both trade and investment agreements. We will assess, **social, human rights, environmental and** sustainability impacts of our trade agreements and their impact on developing countries, particular LDCs.

Paragraph 78

I propose the following changes to the text:

We will carry out negotiation and implementation of trade and investment agreements in a transparent, **participatory and fair** manner and ensure that trade and invest treaties do not constrain domestic policies for sustainable development **and the fulfilment of human rights**. We will strengthen safeguards in investment treaties to ensure that the goal of protecting and encouraging investment does not affect the ability of countries **to realize economic, social and cultural rights**, pursue their **own** policy objectives, and **retain** their right ~~is retained~~ to regulate in areas critical for sustainable development.

⁸ See letter by special procedure mandate holders to the President of the World Bank, 12 December 2014, available at: <http://www.ohchr.org/Documents/Issues/EPoverty/WorldBank.pdf> and the joint letter sent to the European Bank for Reconstruction and Development, 5 May 2014, Communication No. OTH 4/2014 reported in (A/HRC/27/72).

Debt and debt sustainability

While borrowing can be critical to realize social and economic rights and international development goals, there is a risk of over-borrowing without adequate diligence by lenders and borrowers, in particular if projected returns of investment, economic growth rates or increases in revenue collection do not match future debt servicing capacities. Repayment abilities, in particular for in foreign currency denominated loans, may unexpectedly be tarnished by the devaluation of national currencies, natural disasters, or other unforeseen shocks to which low-income countries are particular vulnerable.

Sovereign debt can have a decisive impact on the enjoyment of human rights, as a result of diversion of public revenues from social and other services to debt servicing and owing to harmful policy conditionalities that have frequently been attached to international debt relief. Social and economic rights have not only been under threat in highly indebted low-income countries, but increasingly also in middle income or highly developed countries.⁹ This shows that the debt problem is of universal concern.

While the draft outcome document calls upon the international community to assist countries facing potential debt crises, and underscores the need for fair and efficient debt restructuring mechanisms, it fails to provide any vision for how countries facing debt crisis will be prevented from being derailed again from achieving international agreed development goals. Most importantly it ignores any references to human rights in this chapter, in particular to the Guiding Principles on Foreign Debt and Human Rights that were endorsed by the Human Rights Council of the United Nations in 2012.

Since 2007 there has been a new lending boom to the most impoverished countries. Foreign loans to low income countries nearly tripled between 2007 and 2013, with more development cooperation funds given in the form of loans.¹⁰ Private lenders have as well offered more loans to low-and middle income countries as low interest rates for bonds of highly developed countries have produced particular incentives for more risky lending to developing nations.

In addition economic policies based on high borrowing have not always been sufficiently geared towards the realization of economic, social and cultural rights and sustainable development. One indicator for this is that several low income countries that increased significantly borrowing, did not manage to reduce the number of people living in poverty, despite enjoying above average growth rates.

International debt relief initiatives have been insufficient on their own to ensure that most of the highly indebted poor countries will achieve the Millennium Development Goals by end of this year. While many countries benefitting from debt relief managed to increase social

⁹ The impact of sovereign debt crisis on economic, social and cultural rights has been an increasing concern as well in highly developed countries, see for example recent country visit reports by the Independent Expert on Latvia (A/HRC/23/37/Add.1) Greece (A/HRC/25/Add.1) or Iceland (A/HRC/28/50/Add.1) or the studies commissioned by the European Parliament, The impact of the crisis on fundamental rights across member states - comparative analysis European Parliament, Study requested by the Committee on civil liberties, justice and home affairs. PE 510.021., available at:

[http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU\(2015\)510021](http://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU(2015)510021)

¹⁰ See for example the analysis of World Bank international debt statistics by Jubilee UK, available at

<http://jubileedebt.org.uk/press-release/boom-lending-impoverished-countries-threatens-greece-style-debt-crisis>.

spending, most of them are expected to miss the Millennium Development Goals by the end of this year and some of them are again at risk of falling into a debt trap.¹¹

Paragraph 80

I welcome that language included in the revised draft outcome document has been improved, as the text refers to the rather worrying state of affairs by stating that “many countries remain vulnerable to debt crisis and some are in the midst of crises, including a number of SIDS [Small Islands Developing States] and some developed countries.” I would however suggest rephrasing the last sentence of this paragraph, to acknowledge that next to SIDS several other countries facing a debt crises or challenges to debt sustainability require an urgent solution, irrespectively whether they are SIDS, LDCs, middle-income countries or highly developed countries. In addition the first paragraph should clearly link debt and debt sustainability with sustainable development, as one of the main objectives of the outcome document is to ensure that unsustainable debt does not become a stumbling block for reaching the Sustainable Development Goals:

We acknowledge that debt sustainability challenges facing **such countries, in particular in many SIDS, require an urgent solution to ensure that debt does not undermine sustainable development, the realization of economic, social and cultural rights and the attainment of national and international development goals. We recognize in this context as well** the importance of debt sustainability for middle-income countries, in particular those countries that have graduated from LDC status.

Paragraph 81

I appreciate that the revised text currently includes a commitment to assist all developing countries in attaining long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief and debt restructuring, as appropriate. The sentence stating that “We will continue to support the remaining HIPC-eligible countries in completing the HIPC process, and assist other countries not covered under these initiatives but facing potential debt crises” should also be retained.

As the HIPC process is mainly completed – only four countries have not yet reached completion point – the draft outcome document needs to provide a more conclusive roadmap to ensure that all countries facing debt sustainability challenges will be able to attain the new Sustainable Development Goals during the next 15 years. Given that many countries that have received international debt relief still remain “seriously off track” in reaching the MDGs, ensuring that debt does not undermine sustainable development should be a priority for development financing. The 3rd Conference on Financing for Development should acknowledge that concerted efforts are necessary to ensure that failure is not repeated in 15 years. The document lacks a conclusive vision for dealing with debt crises in middle-income and more developed countries in compliance with international human rights law obligations, in particular those under the International Covenant on Economic, Social and Cultural Rights. I would therefore suggest adding the following text to the end of this paragraph:

¹¹ IMF, Heavily Indebted Poor Countries (HIPC) initiative and Multilateral Debt Relief Initiative (MDRI)—statistical update, December 2014, pp. 15-16, available at: <http://www.imf.org/external/np/pp/eng/2014/121214.pdf>

We will develop new initiatives to ensure that all countries experiencing unsustainable debt, including LDCs and middle income countries, will have sufficient fiscal space to ensure that they can respect and progressively realize economic, social and cultural rights and achieve the SDGs, and their own national development goals.

Paragraph 82

The draft outcome document welcomes the efforts of the World Bank and the IMF to improve their analytical tools for assessing debt sustainability and prudent debt management and invites them in an open consultative process with relevant stakeholders, to strengthen them further, by for example better taking account of the growth-induced effects of debt-financed public investment. I agree that debt sustainability assessments can be further strengthened, however the outcome document should in particular stress in this context that debt sustainability assessments should take into consideration the SDGs.

Thirteen years ago at Monterrey, States agreed that “future reviews of debt sustainability should also bear in mind the impact of debt relief on progress towards the achievement of the development goals contained in the Millennium Declaration.”¹² Similar language should be included now for the SDGs. A debt service burden that might be sustainable from a narrow financial perspective may not at all be sustainable if one considers the comprehensive concept of sustainable development to which the draft outcome document subscribes, which includes the protection of the environment, human rights and social development. The text of this paragraph, if adopted unchanged, would therefore be a step backwards.

I would also like to bring to the attention of Member States that the Guiding Principles on Foreign Debt and Human Rights (A/HRC/20/23), endorsed by Human Rights Council resolution 20/10 in June 2012 maintain that “debt sustainability assessments must not be limited to economic considerations (the debtor State’s economic growth prospects and ability to service their debt obligations) but must also take into consideration the impact of debt burdens on a country’s ability to achieve the Millennium Development Goals and to create the conditions for the realization of all human rights.” (Principle 65)

In order to bring the draft text in line with the Guiding Principles on Foreign Debt and Human Rights and language agreed at Monterrey, I would suggest changing paragraph 82 after its second sentence as follows:

Reviews of debt sustainability should pay explicit attention to the fulfilment of internationally agreed development goals and the realization of human rights. In this regard, the IMF-World Bank debt sustainability analysis (DSA) can be a useful tool to inform the level of appropriate borrowing. We invite the IMF and World Bank in an open consultative process with relevant stakeholders, to further strengthen their analytical tools for sovereign debt management, by for example taking into ~~account~~ **consideration** growth-induced effects of debt-financed public investment **and fiscal space necessary for the realization of the Sustainable Development Goals.**

¹² Monterrey Consensus of the International Conference on Financing for Development, Report of the International Conference on Financing for Development, Monterrey, Mexico, 18-22 March 2002 (A/CONF.198/11, chapter 1, resolution 1, annex, para 49).

Paragraph 84

I welcome the fact that the draft document reiterates the principle “that debtors and creditors must share responsibility for preventing and resolving unsustainable debt situations” and that the document refers in this context to the UNCTAD Principles on Responsible Sovereign Lending and Borrowing. However I regret that an explicit reference to the due diligence standards outlined in these principles 3, 4, 5 and 10 is missing.¹³ Lenders should make informed decisions based on realistic assessments, and determine whether the financing is duly authorized and valid under relevant jurisdiction and borrowers should weigh costs and benefits when seeking loans in order that negative incidences of over-borrowing are avoided (principle 14). The outcome document needs to make a stronger case for assessing adequately the risks of financial transactions and their economic and social implications. Most importantly, however, the draft outcome document fails to refer to the Guiding Principles on Foreign Debt and Human Rights. The Guiding Principles reiterate that all States, lending and borrowing States, have to respect, protect and fulfil human rights and that their lending and borrowing decisions should not derogate from these obligations (Principle 6). They recall as well that international financial institutions and private corporations have an obligation to respect human rights (Principle 9) and underscore that States should analyse their policies aimed at ensuring macroeconomic stability or structural reform with respect to their impact on poverty and inequality, social development and the enjoyment of human rights (principle 12). It would be more than appropriate to also mention the Guiding Principles on foreign debt and human rights as one of the existing initiatives developed within the United Nations towards building a global consensus on guidelines for responsible borrowing and lending.

I therefore suggest that paragraph 84 should read:

We reiterate that debtors and creditors must share responsibility for preventing and resolving unsustainable debt situations. In this regard, we ~~acknowledge~~**endorse** UNCTAD’s principles on Responsible Sovereign Lending and Borrowing, **the Guiding Principles on Foreign Debt and Human Rights**, and **acknowledge** the effort of the Working Party on Export Credits and Credit Guarantees of the OECD to provide guidance to its members on responsible sovereign borrowing and on lending to sovereigns. **We encourage States to design, improve and adhere to national and international standards imposing due diligence obligations on debtors and creditors to avoid unsustainable debt situations. We will make an effort to align our policies of borrowing and lending with international agreed development goals and our human rights obligations. We also acknowledge the decision of the OECD DAC**

Paragraph 85

I welcome that the draft outcome document notes “We affirm the importance of debt restructurings being timely, effective and fair”. There is indeed a need for a timely, effective, fair, and transparent debt workout mechanism to restore public debt sustainability and to

¹³ http://www.unctad.info/upload/Debt%20Portal/Principles%20drafts/SLB_Principles_English_Doha_22-04-2012.pdf

avoid that debt crisis result in unnecessary harm to people in affected countries and to creditors.

Debt restructurings should however not only take into account the ability of countries to achieve sustainable development. They should consider in similar vein the abilities of States to fulfil their human rights obligations, in particular to ensure that core minimum levels of economic, social, and cultural rights can be guaranteed. The Guiding Principles on Foreign Debt and Human Rights underline this in its Section II and in paragraphs 52-54 and Human Rights Council resolutions 27/30 and 28/22 adopted in September 2014 and March 2015 reflect this as well. The resolutions invite States to ensure that a future legal framework for debt restructuring processes should be compatible with existing international human rights obligations and standards. I would therefore suggest the following changes to the last sentence of this paragraph:

The ability of ~~countries~~ **States** to achieve sustainable development, ~~and~~ the SDGs, **and to fulfil their human rights obligations** should be taken into account in debt restructurings.

Paragraph 86

I welcome that the draft outcome document recognizes in the context of debt restructuring processes “that there is room to improve the burden-sharing between public and private sectors and between debtors and creditors” and that “this will require a design of international arrangements that minimizes both creditor and debtor moral hazard, and facilitates a fair, efficient and timely restructuring that respects the principle of shared responsibility.”

In my view States have so far not been able to find an adequate solution to ensure a more predictable and fair process for sovereign debt restructuring. While nearly every State has legal provisions to deal with insolvencies of companies or individuals, there is a legal void at the international level to deal adequately with situations in which a State is unable to pay back its debt. Thirteen years ago, during the First International Conference on Financing for Development at Monterrey, States said they would consider establishing an international debt workout mechanism, but despite valuable work carried out by UNCTAD and other institutions,¹⁴ progress has been limited. Purely contractual solutions – as for example new standard clauses of government bond contracts - are not sufficient to solve debt crises, as they are not completely able to prevent manipulative or purely speculative behaviours and do not cover bilateral and multilateral bank loans.

The only reference to the on-going process within the United Nations to establish a multilateral legal framework for debt restructuring processes is an unspecified reference, saying “We take note of the on-going work being carried out by the IMF, UNCTAD and the UN in this area.”

This rather weak language reproduces the inadequate international response we have seen to date to the problem of sovereign debt restructuring. It also reflects the continuing lack of consensus over how to find adequate solutions to the problem of debt restructuring. Regrettably many major lenders have so far decided not to participate in recent negotiations

¹⁴ See for example most recently UNCTAD: Sovereign Debt Workouts: Going Forward Roadmap and Guide, April 2014, available at: <http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=987>

under the auspices of the United Nations to establish an international legal framework for debt restructuring, although the United Nations are the most comprehensive and participatory international forum.

I fear that such refusal to participate in international consensus building may result in a higher number of debt crises in the future and make existing crises more serious.

Human rights law can make an important contribution to the debate on a debt restructuring mechanism. The Guiding Principles on Foreign Debt and Human Rights, recent resolutions of the Human Rights Council and academic scholarship underline the need to reconcile – sometimes- contradictory obligations that debtor States have: to repay debts and to ensure respect for human rights.¹⁵ As suggested in 2006 by the International Law Commission in its Report on Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law”,¹⁶ there is a legal toolkit to solve these disputes.

If States miss the chance to agree on how to carry out this delicate task of normative balancing, other institutions will probably be asked to do so, such as national and international courts, human rights courts, arbitration panels, Paris Club, London Club, IMF, UNCTAD or the World Bank. There is a real risk that this will produce contradictory interpretations and/or that do not adequately reflect relevant human rights standards. There is a need for coherence in order to avoid the fragmentation of an international legal order that aspires to legality and consistency.¹⁷

States have the chance at Addis to agree on fundamental very much needed international principles to effectively guide debt restructuring processes. UNCTAD has just presented a set of legally well rooted principles for a debt workout mechanism that could be endorsed.¹⁸ These principles are legitimacy, impartiality, transparency, good faith and sustainability, to which - for the sake of clarity - respect for human rights should be added. Even contractual approaches would be enriched by this interpretative set of principles. Mentioning them would encourage States and other stakeholders to design, agree on and implement statutory and/or contractual mechanisms to solve debt crisis within a framework that really helps to solve collective actions problems of sovereign bankruptcies while respecting international law principles and human rights law.

I would therefore suggest modifying the last sentence of paragraph 86 as following, using partly language included in HRC resolution 28/22:

¹⁵ Guiding principles on Foreign Debt and Human Rights (A/HRC/20/23), HRC resolutions 27/30 and 28/8. For academic contributions see for sample JP Bohoslavsky & J Letnar Čerňič (eds.), *Making Sovereign Financing & Human Rights Work*, Hart Publishing, Oxford, 2014; O Lienau, *Rethinking Sovereign Debt: Debt and Reputation in the Twentieth Century*, Cambridge, MA, Harvard University Press, 2013; S Michalowski, “Sovereign Debt and Social Rights – Legal Reflections on a Difficult Relationship“, (2008) 8 *Human Rights Law Review* 35.

¹⁶ UN Doc. A/CN.4/L/682.

¹⁷ Ibid., para. 5-20.

¹⁸ See UNCTAD : Sovereign Debt Workouts, Going Forward. Roadmap and Guide. April 2015, available at: <http://www.unctad.info/en/Debt-Portal/News-Archive/Our-News/UNCTAD-publishes-roadmap-for-sovereign-debt-workouts/>

We further take note of the recent work on the IMF's lending framework, **the Sovereign Debt Workout Principles developed by a group of experts and stakeholders in the context of UNCTAD¹⁹**, and encourage States to participate in the negotiations aimed at establishing a multilateral legal framework for debt restructuring procedures.

Paragraph 87

I welcome that the draft outcome document notes that “we are especially concerned by the continuing ability of uncooperative minority bondholders to disrupt the will of large majority bondholders who accept a restructuring of a debt-crisis country’s obligations” I would suggest to add to this paragraph that “Such uncooperative behaviour is frequently at the expense of the large majority of bondholders ready to participate in a debt restructuring and people living in debt affected countries.” The draft outcome document refers to three actions aimed at reducing the problem caused by so-called vulture funds: reforms to pari passu and collective action clauses in bond agreements; legislative steps to impede litigation by uncooperative minority bondholders and legal advisory services to low-income countries facing litigation by vulture funds.

In addition the draft outcome document includes a commitment of States “to explore enhanced international monitoring of litigating creditors’ activities, strategies and incentives.” These measures are welcome and reflect some of the recommendations my mandate has made to reduce the risks that vulture fund litigation poses.²⁰ It should be noted that hold-out litigation has significantly increased during recent years and affected middle-income and high-income countries as well. I hope that States are able to reach a common agreement in the context of the ongoing discussions within the United Nations on debt restructuring on how to deal in a more effective way with the problem of uncooperative minority bondholders.

Paragraph 89

I welcome that the draft outcome document calls for further steps to ease debt repayment obligations following severe natural disasters or economic shocks, including earthquakes, tsunamis or health epidemics. While every situation needs to be assessed individually, in my view a more consistent approach is needed to ensure adequate debt relief for countries affected by such shocks.²¹ While I fully welcome the debt relief that has so far been provided

¹⁹ See UNCTAD: Sovereign Debt Workouts, Going Forward. Roadmap and Guide. April 2015, available at: <http://www.unctad.info/en/Debt-Portal/News-Archive/Our-News/UNCTAD-publishes-roadmap-for-sovereign-debt-workouts/>

²⁰ See most recently my Statement to the Advisory Committee, Vulture funds and human rights, 25 February 2015, available at: <http://www.ohchr.org/Documents/Issues/Development/IEDebt/VultureFundsAndHumanRights2014.pdf> and the report of my predecessor on the topic, A/HRC/14/21.

²¹ My mandate has for example raised concern about increased emergency lending instead of grant aid to the Philippines following Typhoon Haiyan, see “Typhoon Haiyan: UN human rights expert calls for urgent debt relief for reconstruction in the Philippines - See more at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14482&LangID=E> See also on institutional reforms and social agenda being financed by grants, K Raffer & H Singer, *The Foreign Aid Business: Economic Assistance and Development Co-operation*, Edward Elgar Pub, 1997.

to Ebola crises affected countries in West Africa, it should be noted that structural adjustment and taxation policies, illicit financial outflows, and debt service obligations have also been identified as a contributing factor to the weak state of public health services in these countries.²² Financial policies should therefore not only provide adequate debt relief post-hoc, but ensure that States enjoy sufficient fiscal space to become resilient to natural disasters, epidemics and economic shocks. This requires that States have at their disposal sufficient funds to invest into public infrastructure and public services of adequate quality and are able to maintain or built up emergency storages, disaster response capacities and alert systems. Only then will it be possible to ensure that in the context of severe disasters or global health threats human rights, such as the right to physical integrity, food, health, housing and safe drinking water, remain protected. I would therefore suggest adding at the end of this paragraph:

We will work towards a more harmonised approach to debt relief after natural disasters, health epidemics or severe economic shocks. In order to reduce the impact of natural disasters we will make sure that our financial and structural adjustment policies provide sufficient fiscal space to protect all persons on an equal basis from such risks, including through resilient public services and infrastructure; maintenance of adequate emergency storages for food and medical supplies; and building up appropriate disaster response capacities and alert systems.

F. Addressing systemic issues

I welcome references to enhancing policy coherence, the need for sound regulation of financial markets, and for a global financial safety net, which must however include human rights.

Paragraph 94

I endorse that the draft outcome document calls for “strengthening the voice and participation of developing countries in international decision making, norm setting and global economic governance including through governance reforms at the IMF and reform of voting shares and representation in the IMF and World Bank”. I would recommend adding to its last sentence:

As shareholders in the main international financial institutions, we commit to open and transparent, gender-balanced and merit-based selection of their heads **and of their staff.**

Paragraph 96

I welcome commitments to end the risk of “too-big-to fail” financial institutions, and addressing cross-border elements in effective resolution of troubled systematically important financial institutions. I would recommend adding to this paragraph the following:

²² See my comments on this in my recent report on illicit financial flows and human rights, A/HRC/28/60, para 28-30.

We will take action to prevent significant public funds intended for promoting the realization of economic, social and cultural rights and sustainable development from being used to bail-out financial institutions.

Paragraph 98

I fully endorse “that international agreements, rules and standards are consistent with each other and with progress towards the SDGs” and the call for coherence checks by international institutions and private rule-setting bodies. In my view, this includes coherence with international human rights treaties and standards. The revised draft includes much improved language that needs to be retained, in particular the sentence: “We encourage all development finance institutions to align their business practices with the SDGs, including through assessment of their impact on the enjoyment of human rights, including women’s, children’s, and indigenous peoples’ rights, and environmental, social and governance targets that they have adopted.”

Paragraph 99

Language in this paragraph relating to migrant workers and their rights should be retained.

Paragraph 101

I welcome the commitment to policy coherence, but would urge consideration of the following improvements to the first sentence - as coherence should include social and human rights policies, agreements and standards as well as environmental issues:

Building on the vision of Monterrey Consensus, we resolve to strengthen the coherence and consistency of multilateral financial, investment, trade, and development policy with **environmental, social and human rights standards, agreements and policies**, including environmental institutions and platforms, and increase cooperation of the major international institutions, while respecting mandates and governance structures.

III. Data, monitoring and follow-up

Paragraph 115

I welcome very much the commitment to increase the availability of high-quality, timely and reliable disaggregated data, including by gender. However I would suggest adding the following to reflect that disaggregated data is also necessary for children, the elderly, or other social groups that may be at risk of social exclusion and where disaggregated data is necessary for periodical State reporting under international human rights treaties.

We will seek to increase the availability of high-quality, timely and reliable disaggregated data, including by gender, **age or other relevant social group membership**, in support of the post-2015 development agenda and its means of implementation. **We will make efforts to collect disaggregated data as well for members belonging to minorities, indigenous communities, migrants, persons with disabilities or other relevant social groups which may be at risk of social exclusion in our countries.** A focus on data...

Paragraph 116

I would suggest a similar amendment as mentioned above, next to disaggregation by gender.

Paragraphs 117-123

I welcome commitments to transparency and data access (paragraph 117), data literacy (paragraph 118) and to monitor national progress toward the achievements of the post 2015 development agenda and the future Addis Ababa accord in an open, inclusive and transparent manner with multi-stakeholder participation, and to strengthen mutual accountability for development results (paragraph 120).

Let me conclude with my appreciation for the hard work that has already been invested into producing the draft outcome document and the many contributions that States, international organisations and civil society have made and will continue to make. I would be very pleased, if my suggestions, which are largely based on existing recommendations from United Nations human rights mechanism, language contained in human rights treaties and standards, and Human Rights Council resolutions, will be considered useful during the next rounds of negotiations. It is my sincere view that the outcome document could be further strengthened by ensuring that our approach to sustainable development and development financing is consistent with existing human rights norms, standards and recommendations. The draft outcome document is rightly guided by the ambition to ensure consistency between relevant international agreements, rules and standards (paragraph 98). This is not an easy task, but I hope this paper is a small contribution to this laudable goal.
